

AMENDED IN ASSEMBLY JUNE 27, 2012

AMENDED IN SENATE APRIL 19, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 11, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1387

Introduced by Senator Emmerson
(Coauthor: Senator Berryhill)
(Coauthor: Assembly Member Ma)

February 24, 2012

An act to amend Section 21604 of, and to add Section 21609.1 to, the Business and Professions Code, and to amend Section 496e of the Penal Code, relating to metal theft.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as amended, Emmerson. Metal theft.

(1) Existing law governs the business of buying, selling, and dealing in secondhand and used machinery and all ferrous and nonferrous scrap metals and alloys, also known as "junk." Existing law requires junk dealers and recyclers to keep a written record of all sales and purchases made in the course of their business, including the name and address of each person to whom junk is sold or disposed of, and to preserve the written record for at least 2 years after making the final entry of any purchase or sale of junk. Existing law provides that the failure to keep a written record as required is punishable as a misdemeanor.

Existing law prohibits a junk dealer or recycler in this state from providing payment for nonferrous metals unless, in addition to the

requirement to create and maintain a written record, specified requirements are met, including that the payment for the material be made by cash or check and that, at the time of sale, the junk dealer or recycler obtains a clear photograph or video of the seller. Existing law requires the junk dealer or recycler to preserve this information for 2 years after the date of sale.

Existing law provides that any person who violates specified provisions of existing law relating to secondhand goods is guilty of a misdemeanor.

This bill would prohibit any junk dealer or recycler from possessing a *reasonably recognizable, disassembled or inoperative* fire hydrant; or fire department connection, including, but not limited to, bronze or brass fittings or parts, a manhole cover or lid, or any part of that cover or lid, or a backflow device and connections to that device, *that was owned by a public agency, city, county, city and county, special district, or private utility*, without a written certification on the letterhead of the ~~agency or utility~~ entity that owns or previously owned the material and that the entity has sold or is offering the material for sale, and that the person possessing the certificate and identified in the certificate is authorized to negotiate the sale of the material. *The bill would require a junk dealer or recycler who unknowingly takes possession of prohibited material as part of a load of otherwise nonprohibited materials without written certification to notify the appropriate law enforcement agency by the end of the next business day upon discovery of the prohibited material.* By imposing this prohibition, the violation of which would be a misdemeanor pursuant to other provisions of existing law, this bill would impose a state-mandated local program.

(2) Existing law provides that any person who buys or receives, for purposes of salvage, any part of a fire hydrant or fire department connection, as specified, that has been stolen or obtained in any manner constituting theft or extortion, knowing the property to be stolen or so obtained, is subject to a criminal fine of not more than \$3,000.

This bill would expand this provision by making that fine applicable to any person who is engaged in the salvage, recycling, purchase, or sale of scrap metal and who, knowing that the item has been stolen or obtained in any manner constituting theft or extortion, possesses a fire hydrant, or any part thereof, a fire department connection, including brass fittings and parts, a manhole cover or lid, or any part of that cover or lid, or a backflow device and connections to that device, or any part

of that device, *or who fails to report the possession of prohibited materials in accordance with the provisions above.*

The bill also would state legislative findings and declarations regarding the necessity for its provisions.

By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Theft of fire hydrants, manhole covers, and backflow devices
4 has significantly increased in recent years and represents a
5 significant health and safety issue.

6 (b) Local jurisdictions and public agencies have gone to great
7 lengths to preserve and protect residents and their property from
8 the damages that can result from such theft.

9 (c) Additional laws and regulations need to be enacted that
10 would provide local governments with the tools to further protect
11 both local government property and the health and safety of the
12 residents they serve.

13 (d) Therefore, it is the intent of the Legislature to strictly prohibit
14 fire hydrants, manhole covers, and backflow devices from being
15 accepted, in whole or in part, by a recycler or junk dealer for the
16 purpose of salvage, unless presented with written certification by
17 a representative of the agency or utility owning or previously
18 owning the material.

19 (e) By strictly prohibiting these items from being recycled, the
20 burden is taken off of the recyclers as they will no longer be
21 saddled with the responsibility of having to decipher whether the
22 items were stolen or obtained illegally.

23 SEC. 2. Section 21604 of the Business and Professions Code
24 is amended to read:

1 21604. Except as otherwise provided in this article, this article
2 does not apply to:

3 (a) Any person who buys or sells junk acquired in the conduct
4 of any business other than that of a junk dealer or recycler.

5 (b) Except as provided in Section 21609.1, those purchases of
6 scrap metal by a junk dealer or recycler when the payment for the
7 scrap metal is by check issued to the company represented as being
8 the owner of the scrap.

9 (c) Scrap metal purchased or received from another junk dealer
10 or recycler who has recorded, reported, and held the material as
11 required. The purchase or receipt shall also be exempt from further
12 holding or reporting provided that the selling party gives the buyer
13 written assurance of this fact. The seller shall be held responsible
14 for any failure to report or hold.

15 SEC. 3. Section 21609.1 is added to the Business and
16 Professions Code, to read:

17 21609.1. (a) No junk dealer or recycler shall possess any
18 *reasonably recognizable, disassembled or inoperative* fire hydrant;
19 or fire department connection, including, but not limited to,
20 *reasonably recognizable* brass fittings and parts, or *any* manhole
21 cover or lid or *reasonably recognizable* part of ~~that~~ *a manhole*
22 cover or lid, or *any* backflow device or connection to that device
23 or *reasonably recognizable* part of that device, *that was owned or*
24 *previously owned by an agency*, in the absence of a written
25 certification on the letterhead of the agency ~~or utility~~ owning or
26 previously owning the material described in the certification that
27 the agency has either sold the material described or is offering the
28 material for sale, salvage, or recycling, and that the person
29 possessing the certification and identified in the certification is
30 authorized to negotiate the sale of that material.

31 (b) *A junk dealer or recycler who unknowingly takes possession*
32 *of one or more of the items listed in subdivision (a) as part of a*
33 *load of otherwise nonprohibited materials without a written*
34 *certification has a duty to notify the appropriate law enforcement*
35 *agency by the end of the next business day upon discovery of the*
36 *prohibited material. Written confirmation shall relieve the junk*
37 *dealer or recycler from any civil or criminal penalty for possession*
38 *of the prohibited material. The prohibited material shall be set*
39 *aside and not sold pending a determination made by a law*
40 *enforcement agency pursuant to Section 21609.*

1 (c) For purposes of this section, the following definitions apply:

2 (1) “Agency” means a public agency, city, county, city and
3 county, special district, or private utility regulated by the Public
4 Utilities Commission.

5 (2) “Written confirmation” means a confirmation in written
6 form by the junk dealer or recycler to a law enforcement agency,
7 including electronic mail, facsimile, or a letter delivered in person
8 or by certified mail.

9 SEC. 4. Section 496e of the Penal Code is amended to read:

10 496e. (a) Any person who is engaged in the salvage, recycling,
11 purchase, or sale of scrap metal and who possesses any of the
12 following items *that were owned or previously owned by any public*
13 *agency, city, county, city and county, special district, or private*
14 *utility* that have been stolen or obtained in any manner constituting
15 theft or extortion, knowing the property to be so stolen or obtained,
16 *or fails to report possession of the items pursuant to Section*
17 *21609.1 of the Business and Professions Code*, is guilty of a crime:

18 (1) A fire hydrant or any *reasonably recognizable* part of that
19 hydrant.

20 (2) Any fire department connection, including, but not limited
21 to, *reasonably recognizable* bronze or brass fittings and parts.

22 (3) Manhole covers or lids, or any *reasonably recognizable* part
23 of those *manhole* covers and lids.

24 (4) Backflow devices and connections to that device, or any
25 part of that device.

26 (b) A person who violates subdivision (a) shall, in addition to
27 any other penalty provided by law, be subject to a criminal fine of
28 not more than three thousand dollars (\$3,000).

29 SEC. 5. No reimbursement is required by this act pursuant to
30 Section 6 of Article XIII B of the California Constitution because
31 the only costs that may be incurred by a local agency or school
32 district will be incurred because this act creates a new crime or
33 infraction, eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section 17556 of
35 the Government Code, or changes the definition of a crime within
36 the meaning of Section 6 of Article XIII B of the California
37 Constitution.